

Quid Novi

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McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT UNIVERSITE MCGILL

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le 29 octobre 1986

Mandatory Drug Testing Raises Constitutional Issues

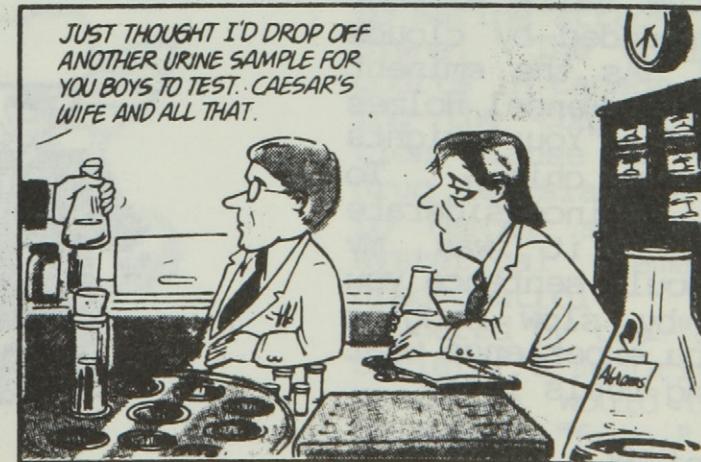
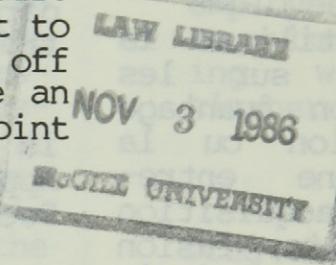
by Terry Pether

In his inimitable topsy-turvy fashion, Prime Minister Mulroney has come out in favour of mandatory drug testing for government employees. (Why not? His pal Reagan has). Already, many companies in the private sector require on-the-job urinalysis. But not only is drug testing unreliable (it can produce false results where someone has, for example, taken Contac; test takers can cheat by switching samples or adding acidic substances to them; lab technicians can be careless), it is also quite possibly unconstitutional.

The Canadian Charter of Rights and Freedoms guarantees to individuals legal rights such as those to life, liberty and security of the person and to be secure against unreasonable search and seizure. If mandatory drug testing is ever legislated into practice, these rights will be limited. It would then, of course, fall upon the courts to determine whether such legislation would be valid as a reasonable limit justifiable in a free and democratic society in the face of issues likely to be raised such as the following:

- can an employer demand that an employee submit to urinalysis even if there is no suspicion of drug use?
- can an employer require an employee to submit to testing for drug use off the job, i.e., where an employee smoked a joint on his lunch hour?
- can an employer jeopardize the mobility and liberty of the employee by sharing positive test results with other employers or the police?

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ANNOUNCEMENTS

SEMINAIRE DROIT DES AFFAIRES

Certaines places sont encore disponibles pour ceut/celles qui désirent participer au séminaire de cette semaine dont le sujet sera:

Comment la loi sur les compagnies peut être mise au service de votre entreprise.

Comment... utiliser la Loi québécoise sur les compagnies à son avantage pour la création ou la croissance d'une entreprise: acquisition financière publique, fusion et tous les aspects juridiques concernant une compagnie.

Attention Smokers of McGill Law

As if you didn't know, there are designated areas for your unsatisfiable addiction. It is unjust that one cannot eat in the Pit, study in the Common Room or wait in the halls without being surrounded by clouds of smoke. As the eminent jurist Oliver Wendel Holmes once stated "Your rights end with my chin." To those inconsiderate smokers, if it was my choice I would sentence you to death by slow hanging and let you experience what suffocating feels like.

Marc Spivak

The Viscount Bennett Fellowship

administered by

The Canadian Bar Association

Under the terms of a deed of gift to the Canadian Bar Association from the Right Honourable Viscount Bennett, P.C., K.C., LL.D., D.C.L., a trust fund to be known as the Viscount Bennett Trust Fund, was established for the purpose of utilizing the annual income therefrom in encouraging a high standard of legal education, training and ethics.

Additional information is available at S.A.O. Application deadline is December 15, 1986.

Talmud Study Group

Wednesday, 1:00 P.M.
Room 203

Classes are led by Prof. L. Kaplan. Dr. Kaplan is a scholar both in Talmudic law and in medieval Jewish law and philosophy. He has written extensively in these areas and is responsible for major translations of both medieval and contemporary works.



Placement Centre

ALBERTA

COOK SNOWDON have submitted an invitation letter to all articling students interested in applying for 1988 articles. Interested students should submit their résumés, copies of law school and undergraduate transcripts and a brief cover letter indicating your availability for an interview. These should be submitted to Mr. F.G. Vaughn Marshall before November 30, 1986. Refer to Posting #17.

NEWFOUNDLAND

Applications for the positions of articled clerk with the office of CHALKER, GREEN & ROWE are being solicited. Students expecting to complete their studies this Spring and students who will have completed second year this Spring are invited to submit applications for these positions. Applicants should send résumés, complete with university transcripts to Mr. Evan J. Kipnis. For further information refer to Posting #16.

QUEBEC

DE GRANDPRE, GODIN have positions available for third year students who will be completing their Barreau during the month of May 1988. Interested students are invited to send their C.V.'s (deadline

Cont'd on p. 4

Holy Smokes !

Due to a lack of appropriate publicity, the new smoking policy in the Law Faculty has never been adequately enunciated or advertised. The following, therefore, represents the guidelines adopted by the Dean's Committee on Smoking Policy (which deliberated this past summer), as confirmed by the Dean's Office :

- 1) All of New Chancellor Day Hall is a non-smoking area, including the "PIT";
- 2) The Cafeteria is a smoking area throughout (on both sides of the Cafeteria) though there is no smoking while standing in line for food;
- 3) The room adjacent to the Cafeteria (the old Journal Office), recently renovated, is strictly a study area wherein smoking is permitted;
- 4) The old LSA office is now a smoker's lounge;
- 5) The Common Room on the second floor of Old Chancellor Day Hall is a smoking area.

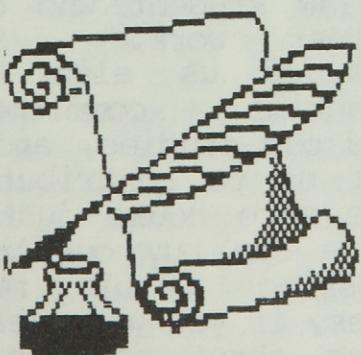
In light of these guidelines, all members of the Faculty are requested to govern their conduct accordingly. Smokers are requested to avail themselves of the Cafeteria, the lounge or the Common Room as areas in which to talk or eat, leaving the Study Room adjacent to the Cafeteria as an area for study-purposes only (hence, quiet and clean!) The Study Room remains the only area in the Faculty which guarantees smokers the

peace and silence in which to study while indulging in their addiction.

It should be noted that the ongoing stages of renovations pursuant to the implementation of the new smoking policy will include replacing the lockers currently in the "PIT" with additional tables and seating for non-smokers; additional lighting and seating in the Common Room; and cosmetic "touch-ups" (painting, etc.) of all relevant areas.

Meanwhile, I take this opportunity of apologising to those people to whom I've had the occasion to explain the "role" of the new Study Room with somewhat less than the necessary graciousness. As it is unpalatable to all concerned that any one individual should "police" the new smoking policy, especially when it has been poorly communicated to date, I hope the present will serve the purpose of clarification.

Henri M. Bybelezer
LL.B. III
Member, Dean's Committee
on Smoking Policy.



Mandatory Drug Testing Cont'd from p. 1

- is mandatory drug testing where no suspicion of drug use arises unreasonable search and seizure?
- what right does the employee have to protect the privacy of his bladder?
- must an employee disclose to an employer all his current medication, for example, where he is prescribed anti-depressants?
- what right does the employee have to refuse to submit to drug testing without risking his/her job?

Drug abuse is, to state the obvious, a very real problem with costly economic and social consequences for employers and the community at large. Some legislative controls to drug use are necessary. In the United States, politicians are taking to the campaign trail with hammers and smashing hash pipes on podiums. Others are conducting "family testing derbies." Their battles go beyond mandatory urinalysis to issues ranging from the death penalty for pushers to Marine attacks on Colombians. The challenge for courts in Canada, in applying the Charter's limitation clause to any anti-drug legislation, would be to temper any potentially hysterical elements of a drug-control programme favoured by the "democratic society"'s majority so that society would be allowed to remain "free."

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LETTERS TO THE EDITOR

Dear Editor,

I would like to respond to Ken Monteith's letter (Oct. 15), in which he dismisses complaints that the bookstore is open too little this year.

Mr. Monteith, nobody forced you to assume responsibility for managing the bookstore this year. You volunteered to do so -- in fact, and correct me if I'm wrong, you applied to do so -- knowing fully (I assume) the amount of your time it would consume. Volunteers are often overworked and underappreciated, but that is the lot of the volunteer. Having willingly accepted responsibility, it is not open to you now to say, "Well, I'm a student too, so don't expect me to accommodate you." Imagine the outcry if Legal Aid staffers, tutorial group leaders, students' council members and other volunteers made the same claim in order to justify decreasing their responsibilities.

I resent your statement that a student has no right to complain unless he offers his time to the bookstore. You are not the only law student who does volunteer work. Some others of us also have substantial commitments beyond our studies, and to expect us to contribute a couple more hours just so that we can buy our books is asking a bit much. Besides, if you were really serious about wanting to extend hours, we would by now have seen some signs up

asking for volunteers. A complaint that people don't offer to help from somebody who doesn't ask for help lacks substance.

John Hale,
Nat. Prog. IV

PLACEMENT CENTRE

Cont'd from p. 2

of October 31, 1986) plus academic records to Me Yves Poirier. Refer to Posting #15.

REMINDER

Students are reminded that once again this year the Law Institute of the Pacific Rim is accepting nominations for the Australian Summer Program. Our Faculty has been invited to participate in the competition for places in the summer 1987 program. This program offers law students an opportunity to gain legal working experience during the summer in Australian law firms. Second, third and fourth year students are invited to submit their C.V.'s, transcripts and a brief letter of application to Mrs. Higgins (Admissions Office) no later than November 12, 1986.

L.S.A. Divvies Up Your Money

by Terry Pether

Except for a few adjustments to come here and there, the LSA budget meetings are over for another year. These are the meetings at which every club and group in the faculty beg for their share of LSA funds. The following account summarizes how the budgeting process works, from start to finish.

First, the Treasurer calls upon each group to submit its budget proposal, which is to include an estimate of expenses for that school year's activities as well as a paragraph outlining how the group meets LSA eligibility requirements. This latter item allows all those clubs with five or ten members to boast about their valuable contributions to student life within the faculty of law. I know, I wrote quite a load on behalf of the Quid.

Next, the Treasurer sits down with the LSA Executive and his fourteen or fifteen thousand dollars to decide how much of that amount each group shall receive. Forum National, for example, requested \$3000 and got \$600 (I think something about needing \$35 for Brian Mulroney's train travel expenses tarnished the integrity of their submission). In fact, most groups don't get as much as they ask for.

Then, the amounts that the Executive arrives at are made public at the meetings in the form of

motions put forth by the Treasurer (hapless at this point). What follows are impassioned yet reasoned pleas from group leaders for more money, supposedly essential lest they be bled to death or disbandment. LSA council members debate on each side and in a few areas between under the control of their duly elected (and effective) speaker. Ultimately, they usually vote in favour of the original motion regardless. And that's it.

In the end, group representatives exit the meeting room, slamming doors, bitching. It's not really the money (they'll crawl to the Dean's Office later). It's the seemingly summary way in which their needs were assessed. It is almost impossible to revise the initially presented figures. The Treasurer wants to keep the contingency fund contingent. If a club wants more money, it has to specify from which other cash-starved group it proposes to take it. Any target will do. Indeed, the criteria is quite random. For example, if a group's budgeting projections include transportation costs to conferences, then its donation from the LSA is limited to 1/2 the cost for one person to attend regardless of how far away or important the conference is. But the LSA doesn't mention this in advance. This was particularly irksome to Women in the Law whose agenda for this year is devoted largely to attending a crucial bi-annual conference

of the national organization in Winnipeg as the only caucus from Quebec. And LSR has already sent their delegate to a gathering in Victoria, B.C. (Don't panic if you're planning to go to the Law Games in Sherbrooke. The

Cont'd on p. 6

Dear Abby Initio

Dear Abby Initio,

Does the study of law preclude romance? I have not had a romance since the day I walked through the doors of Chancellor Day Hall. It is beginning to worry me.

Chancellor Day Lonely Heart's Club

Dear Lonely Heart,

I suggest you find guidance in the words of Jorge Luis Borges. He wrote the following at the age of seventy, having attained the status of the greatest Spanish-language writer of this century:

"I no longer regard happiness as unattainable; once, long ago, I did. Now I know that it may occur at any moment but that it should never be sought after. As to failure or fame, they are quite irrelevant and I never bother about them. What I'm out for now is peace, the enjoyment of thinking and of friendship, and, though it may be too ambitious, a sense of loving and of being loved.

NOV 3 1986

McGILL UNIVERSITY

Law Professor «Abused» for Feminist Perspective

Reprinted from the Globe and Mail, October 20, 1986.

A Queen's University law professor says she was "the target of a lot of abuse" when she attempted to introduce a feminist perspective into her classes.

Exasperated and angered by the problems she had in the predominately male faculty, Professor Sheila McIntyre wrote a 19-page memo documenting the hostility she had met in her first year of teaching.

The memo, circulated to staff and some students during the summer, is now being reviewed by Queen's Principal David Smith who has asked Dean of Law Dennis Magnusson for a report.

Mr. Magnusson said the memo will be discussed at a faculty staff meeting this week.

Prof. McIntyre, 34 who graduated from Queen's law school in 1984, was confident she could introduce a "feminist commitment" to the classroom and the faculty as a whole. But she was not prepared for the depth of the hostility and opposition she had to face.

"My preliminary conclusion is that it is emotionally destructive and intellectually disabling for me - and I believe for most feminists - to try to exist on a law school faculty."

Some of the incidents she describes include a "mutiny" staged by several male students in her class

last fall. She said the students were angered by her use of non-sexist language and her raising of gender issues.

"About six men were deliberately disruptive, unco-operative, interruptive and angry, and belligerently tried to prevent students who disagreed with their position from speaking by a combination of insult, interruption, and hostile gestures."

About 180 students attended a protest rally after false rumors circulated that hiring policy was to be changed to add more women to the faculty.

She describes one "devastating" encounter with a male faculty colleague in which she was "dressed down publicly in the halls" and then "rebuked, insulted and threatened" in her office for voicing feminist concerns.

Mr. Magnusson said that her experiences are not unique to the law faculty or to Queen's.

"I'm afraid Sheila would have a similar experience in most of our faculties of law throughout the country. I'm afraid there are many disciplines that for years have been dominated by men who feel threatened by challenging young women who philosophically challenge some of the basic assumptions of their disciplines."

Only three of the 30 tenured professors at Queen's law school are held by women. Two are teachers and a third is the school's chief librarian.

Chancellor Day Landmark Destroyed

Somebody ordered the painters gussying up the basement in Old Chancellor Day Hall to besmirch with whitewash everybody's old friend, the Quid Novi door. Rest assured that this landmark in the tradition of pop art will return. And whomsoever ordered its destruction shall pay!

LSA Divvies Up Your Money Cont'd from p. 5

Sports Committee got a thousand bucks). To be fair, this type of problem isn't entirely the LSA's fault. Each group submits their own kind of budget with their own kinds of requests. In future years, a standardized budget form should be distributed to faculty groups by the LSA.

So every group asks for lots of money. Every group gets some, without ever truly realizing by what criteria their allotment was assessed. Only one thing is certain: the LSA's money pit is not bottomless. And Treasurer Dave is damned if he does and damned if he doesn't.

FACULTY GOES SIXTIES

by Terry Pether

Those of you who missed the LSA Coffee House last Wednesday night also missed the chance to wash down rich pastries with cold beer to the groovy sounds of the sixties and the early seventies. The Common Room was transformed to a bohemian coffee bar, candlelit and cozy. Old Chancellor Day's own took to the stage to be lively, to be mellow.

David Shiller and his friend, Steven Cape, kicked off the entertainment with the same blend of old favourites and goofiness that made their summertime gigs on Prince Arthur so popular. The duo's playlist ranged from the stirring harmonies of Simon and Garfunkel classics to rousing renditions of old rock 'n roll tunes. Gus Grant limped to his place in the spotlight to strum away and share some blues. And Diana Young impressed everyone with her breezy treatments of, among others, the best of Ricki Lee Jones. Her velvet voice and crafty rhythms had them hollering for more.

The evening's organizer, Teresa Scassa, was disappointed with the turnout. But that could not detract from the great time had by all who did show up. The LSR plans to hold more Coffee Houses in the future. It will be your loss if you stay home. Proceeds from this event are to be donated to UNICEF.

POTPOURRI

- Côte St. Luc will re-enact an anti-smoking by-law after a Superior Court justice held a section of the law to be invalid. The offending section made it compulsory for shopowners to request customers to refrain from smoking, and this was held to be an illegal delegation of authority by the municipality.

- In Los Angeles, a businessman who was accused of being a spy and was expelled from the Soviet Union after fourteen years of doing business there, received permission from a federal magistrate to commence seizure proceedings on Soviet assets in the United States. The unprecedented request came on the heels of a libel judgment for \$450,000 U.S. for damages and payment for supplies delivered before the expulsion of Raphael Gregorian.

- Another chapter in the continuing saga of Bill 101: Premier Bourassa stated that he would initiate changes to the law by issuing decrees, thereby bypassing the National Assembly, only if the cabinet does not have the opportunity to table amendments to the law before the Nov. 13 cut-off date for passage by the Assembly.

The law as it stands authorizes cabinet to pass regulations exempting certain groups from observing the French-only provision.

A Case for Restitution?

from **The Gazette Probe**

"I think I've been stung by a mail-order-bride scam.

"Last Sept. 24 I mailed a cheque for \$154 U.S. to Oriental Blossoms in Honolulu, Hawaii, for a membership in my search for the ideal wife.

"I was guaranteed a booklet entitled In Search of the Ideal Wife, plus a nine-month subscription which would allow me a selection of possible mail-order brides.

"I was also promised a list of names of seven suitable women to whom I could write.

"I did receive a list of seven girls but each candidate was too short, since I asked that they be at least five feet two inches tall. Besides, I paid an extra \$10 to get a letter from the girls and none has ever written a single line to me.

"Finally, the girls were all from the Philippines despite my request for other nationalities, especially Chinese or Japanese."

Ray Gupta,
Montreal

CALIFORNIA LANGUAGE CRISIS

by Terry Pether

There is a growing debate in the United States that has compelling similarities to Québec's (indeed Canada's) own language debate. California's Proposition 63 aims to amend the state constitution so that "English is the official language of (the) State of California." While Gov. George Deukmejian, the son of immigrants, and his opponent for the upcoming gubernatorial race, L.A. Mayor Tom Bradley, strongly condemn the initiative, Proposition 63 has strong community support. Recent polls suggest that it will pass in the Nov. 4 state election.

Anglophones are a declining majority amid the rising Hispanic population in California. They charge that Hispanic politicians oppose the proposition only to confine Spanish-speaking immigrants to the barrio

power-base. These politicians counter that the measure is nothing more than an unjust tactic designed to deprive immigrants of hardwon bilingual government programmes in areas of health and education.

But the language of the proposition is vague. It remains to be seen, if it is passed, how narrowly or widely the courts will interpret the amendment - that, if its constitutional validity is upheld. The author of Proposition 63, Stan Diamond, is especially against bilingual ballots. He is also opposed to bilingual education. Yet bilingual signs in private enterprise and Spanish-speaking service on 911 lines do not overly concern him. His selective offence to the Spanish language suggests an almost prejudiced fear of a strong and informed Hispanic vote. Diamond himself does little to discourage this impres-

sion when he admits to pinning his hopes for Proposition 63 with Southern California "where the money, votes and power are."

The outcome of the vote on Proposition 63 has significant nation-wide implications for the United States. If the measure successfully passes, Diamond and his "U.S. English" group plan to organize and launch similar initiatives in Texas, Arizona and Washington. A campaign is already underway in Florida. Perhaps the proponents of English only laws should examine closely the example of Québec's experience with the French language to realize how difficult and potentially unfair it can be when a cultural group attempts to balance the legitimate protection of a cherished heritage against the worst excesses of nationalism.

SPORTS UPDATE

On this past Saturday morning the two men's flag football teams braved the cold weather and the early hour to play the first annual Julius Grey Cup. Fortunately enough, the Cup did show up . . . and on time! The final score of this heartily fought battle was:

Interdicts	23
Pro-Phlactics	0

Look in the Quid next week for all the exciting details.

LAW JAYS BAG EAGLES

Congratulations go out to the Law Jays softball team for their 2nd straight playoff victory. Friday afternoon was doomsday for the overly confident, but not altogether unprofessional Legal Eagles as their wings were clipped 8-6 by this almost entirely 2nd year law team.

Although the game had its sour notes, one cannot deny the Jays earned their sweet victory, by stopping the Eagles' late game rally and taking it in the last inning.

Good luck in the rest of the playoffs Law Jays.

Eagles? Maybe next year.

